

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

TREASURY BUILDING, P.O. BOX 1528, LANSING, MICHIGAN 48901
DOUGLAS B. ROBERTS, State Treasurer

REVENUE ADMINISTRATIVE BULLETIN 1995 -- 3

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SALES AND USE TAX -- NONPROFIT ENTITIES

(Replaces Revenue Administrative Bulletin 1990-3)

RAB-95-3. This bulletin announces the amendments to the General Sales Tax Act and Use Tax Act pertaining to nonprofit entities, enacted by Public Act 156 of 1994 and Public Act 424 of 1994, respectively.

Both the General Sales Tax Act and Use Tax Act were amended to alter the qualifications for sales and use tax exemptions provided to certain nonprofit organizations other than schools, churches, nonprofit hospitals and governmental agencies. After the January 1, 1994 effective date, the exemption is limited to organizations that have federal tax-exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. In addition, the amendment to the General Sales Tax Act enacts a new provision for certain qualified nonprofit organizations that gives an exclusion from gross proceeds for sales made by nonprofit entities. A new procedure for claiming exemption for purchases made by certain qualified nonprofit organizations is also provided.

Background

Prior to the passage of the 1994 public acts, sales and use tax exemptions for schools, nonprofit hospitals and certain nonprofit organizations were covered only in sections 4a(a) and 4(i) of the General Sales Tax Act and Use Tax Act [MCL 205.54a(a); MSA 7.525 and MCL 205.94(i); MSA 7.555(4i)]. Michigan Administrative Code Rule 205.140 [1979 AC, R 205.140] specifically discussed these "certain other types of nonprofit organizations."

Revenue Administrative Bulletin 1990-3 established procedures for Departmental review and determination of tax-exempt status for these "certain other types of nonprofit organizations". The Sales, Use, and Withholding Taxes Division reviewed information supplied on an application and supporting documents, and issued an "exemption ruling letter" signed by the Administrator of the division, which affirmed the exemption for these "certain other types of nonprofit organizations."

SALES TAX

Michigan's 6% sales tax is imposed on a seller for the privilege of engaging in the business of making sales at retail in Michigan. A sale at retail is defined as the transfer of ownership to tangible personal property.

The tax applies to sales of tangible personal property which take place in Michigan. Generally, this will only include purchases by nonprofit organizations from businesses or other persons located in Michigan.

Sales tax will not apply to purchases where the tangible personal property is shipped by mail or common carrier to the nonprofit organization from a location outside of Michigan. These sales will be discussed later in this bulletin under "use tax."

Sales to Nonprofit Organizations

Public Acts 156 and 424 of 1994 eliminate the need to apply for Departmental certification for new organizations by allowing tax exemption for sales to nonprofit organizations that are exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (IRC). The new exemption is retroactive to January 1, 1994.

To be exempt, the purchase of tangible personal property must be used or consumed primarily in carrying out the purposes of the institution or agency, as stated in the bylaws or articles of incorporation of the exempt entity. While the bylaws or articles of incorporation of an exempt nonprofit organization probably allow the organization to perform fund-raising activities such as bingo, Las Vegas Nights, and raffles, fund raising is not the stated purpose of the organization. Fund raising is merely a means to an end. The stated purposes of nonprofit organizations are the end goals, which are generally of a health, welfare, educational, cultural arts, charitable, or benevolent nature. An organization would not receive federal 501(c)(3) or 501(c)(4) nonprofit status if its stated purpose was to run a bingo game, Las Vegas Night, raffle, or other fund-raising activity. Therefore, purchases of property used in fund-raising activities are taxable.

Similarly, the sale of a vehicle to the exempt nonprofit organization may or may not be exempt from sales tax. The sale would be exempt if, for instance, the administrative duties of the director required transportation, and the vehicle would be used primarily for that purpose. The sale would not be exempt if the vehicle is given to the director for personal use as a fringe benefit or as compensation, or it will be used as the prize in a fund-raising raffle.

Sales, the cost of which, will be paid or defrayed by reimbursement to the nonprofit entity from members or others are not exempt. In all instances, to be exempt the consideration for the purchase must move directly from the funds of the exempt nonprofit organization.

Sales of tangible personal property to qualified nonprofit organizations for use in qualified activities (not for resale) are exempt from tax provided:

1. Organizations previously certified as exempt present the "exemption ruling letter", reissued after June 12, 1994 by the Department of Treasury (see page 6). These organizations should present to the vendor a copy of their "exemption ruling letter."

or

2. Organizations not previously certified as exempt must give the vendor the following information:

A. A Certificate of Exemption (see page 7). This form may indicate in the "valid reason" section, "For use or consumption in connection with the operation of a nonprofit organization exempt from Federal income tax under section 501(c)(3) or 501(c)(4) of the IRC";

and

- B A copy of the Federal exemption letter indicating 501(c)(3) or 501(c)(4) exempt status received from the Internal Revenue Service.

(A two-sided, one-page document could be used: one side the Certificate of Exemption, and the other a reproduction of the same.)

This procedure does not apply to nonprofit schools, nonprofit hospitals, churches, or governmental agencies that have separate statutory exemption sections. These entities would provide their vendors with a claim of tax exemption on the Certificate of Exemption prescribed in the Department's Revenue Administrative Bulletin, "Sales and Use Tax Exemption and Requirements," on the basis of their being a school or a church, etc.

Nonprofit organizations interested in obtaining federal tax-exempt nonprofit status under the provisions of Internal Revenue Code Sections 501(3)(c) or 501(c)(4) should obtain Publication 557, "Tax Exempt Status for Your Organization," from the Internal Revenue Service. The Michigan Department of Treasury does not determine nonprofit status, and no longer issues rulings on sales and use tax exempt status for individual organizations.

Sales by Certain Nonprofit Entities

Public Act 156 of 1994 (effective January 1, 1994) exempts from sales tax sales at retail made by certain organizations from tax if aggregate sales at retail for the calendar year are less than \$5,000. Sales at retail are defined as transfers of ownership of tangible personal property. The following organizations qualify if they are nonprofit:

- schools
- churches
- hospitals
- parent cooperative preschools
- nonprofit entity with an exemption ruling letter signed by the administrator of the Sales, Use, and Withholding Tax Division
- Internal Revenue Code Section 501 (c)(3) federal income tax exempt entity;
- Internal Revenue Code Section 501(c)(4) federal income tax exempt entity.

Affiliated clubs, associations, auxiliaries or other organizations are not allowed a separate exemption under this provision. However, "school" is defined in such a way that each elementary, middle, junior, or high school site is allowed a separate exemption.

Nonprofit organizations making sales at retail are still required to register and obtain a sales tax license even if their total sales for the calendar year are less than \$5,000 and they have no tax liability. Purchases of items intended for resale can only be purchased without payment of tax by making a claim of exemption on the Certificate of Exemption by reason of "for resale at retail." A sales tax license is required before such a "resale" claim can be legally made.

Exemption is only available to those noted organizations who have total aggregate sales in a calendar year from all sales activity of less than \$5,000. If sales in the year are \$5,000 or more, all sales are subject to tax. This is not a limitation on the amount of sales tax that may be collected.

Regardless of the amount of total aggregate sales in the calendar year, if sales tax is charged to the customers, it must first be refunded to the customers before the exemption is allowed. Tax not refunded to the customers must be remitted to the State. This is to avoid unjust enrichment in accordance with section 23 of the General Sales Tax Act. [MCL 205.73; MSA 7.544].

USE TAX

Michigan's 6% use tax is imposed on a purchaser for the act of storing, using or consuming tangible personal property in Michigan. Use is defined as the exercise of any right over tangible personal property incident to ownership of that property.

The tax applies to storage, use or consumption of tangible personal property on which no Michigan sales tax has been paid. An offsetting credit is allowed of up to 6% for sales or use tax properly paid to another state with which Michigan is reciprocal. Michigan is reciprocal with most states that have a sales or use tax.

Generally, the tax will only apply to purchases of tangible personal property by nonprofit organizations from businesses or other persons located outside Michigan. Most commonly, it will apply to purchases where the tangible personal property is shipped by mail or common carrier directly to the nonprofit organization from a location outside of Michigan.

Many businesses located outside Michigan, or that have locations in Michigan but shipping from inventories located outside Michigan, are registered with the State of Michigan to collect and remit Michigan use tax from their customers. However, if tax is not itemized on billings, Michigan customers must remit 6% use tax directly to the State of Michigan. Organizations filing Michigan sales tax or income tax withholding forms may make payment on those same forms. Organizations not filing regular sales, use or withholding tax returns may pay their use tax liability on form C-3001 Individual Purchase Use Tax Return.

In addition to purchases of tangible personal property, use tax frequently applies to the receipts from rentals of tangible personal property. It also applies to telecommunication and similar services, as well as hotel, motel, and similar accommodations.

Purchases by Nonprofit Organizations

Public Act 424 of 1994 established an exemption in the Use Tax Act which was identical to that placed in the General Sales Tax Act by Public Act 156 of 1994 for sales to nonprofit organizations. The exemption was expanded to all federal income-tax-exempt organizations under section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code (IRC).

As with sales tax, two exemption avenues were established by Public Act 424. The first was a continuation of the exemption for organizations that had previously received an "exemption ruling letter" signed by the Administrator of the Sales, Use and Withholding Taxes Division dated after June 12, 1994. The second was to expand exemption to organizations without an "exemption ruling letter," but having received Federal 501(c) (3) or 501 (c) (4) tax exempt status from the Internal Revenue Service.

Public Act 424 which amended the Use Tax Act nonprofit exemption was filed and became law on January 5, 1995, retroactive to January 1, 1994. The previous discussion for sales tax concerning sales made to nonprofit organizations will have general application to purchases by nonprofit organizations that may be subject to the use tax. This includes the discussion that the exemption is limited to use or consumption of the item primarily in carrying out the purposes of the nonprofit organization as stated in the bylaws or articles of incorporation.

Additional Information or Forms

Additional information or forms may be obtained by writing to:

Sales, Use and Withholding Taxes Division
Michigan Department of Treasury
Treasury Building
Lansing, Michigan 48922
or by telephoning (517) 373-3190



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TREASURY BUILDING

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LANSING, MICHIGAN 48922

THIS EXEMPTION FORM IS NOT**TRANSFERABLE****TO ANOTHER INDIVIDUAL OR ENTITY.**

Effective Date

SAMPLE

This letter serves as notice to a seller that your organization qualifies to buy goods and services without paying the Michigan sales or use tax. **TREASURY DOES NOT ISSUE TAX EXEMPT NUMBERS.**

To buy goods and taxable services without paying a sales or use tax, present:

- a copy of this letter, and
- a completed certificate (below) certifying to the seller that the goods or services being purchased are for purposes of the organization and are being paid for from organizational funds. The seller must keep a copy of this certificate with the record of the sale.

Please note the following.

- This exemption does not apply to the purchase of tangible personal property or to the purchase of vehicles that are not used primarily to carry out the purposes of your organization as stated in your bylaws or articles of incorporation.
- Employees or members may NOT use this exemption to purchase goods or services for personal use.

The Michigan Department of Treasury may review your exempt status at any time to verify your eligibility. If the Internal Revenue Service revokes your exempt status, if a Treasury audit discovers non-exempt status, or if for any other reason you organization no longer qualifies for exemption, then your organization is subject immediately to sales or use tax on its purchases.

Please notify us if you have a name or address change. If you have questions, please contact this office at (517) 373-3190.

Sincerely,

Jesse A. Weaver, Administrator
Sales, Use and Withholding Taxes Division

CERTIFICATE REQUIRED FOR TAX EXEMPT SALES

I certify that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named above and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

Signature of Authorized Representative of Non Profit Organization

Date

STATE OF MICHIGAN

Sales Tax License No., if applicable

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